

March 11, 2010

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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(SPACE BELOW FOR FILING)

Attorneys for Pandol Brothers, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

JAMES ALAN PANDOL,

Debtor.

Tax ID#: xxx-xx-7844
Address: P.O. Box 1592
Delano, CA 93216

CASE NO. 09-62162

Chapter 12

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
PURSUANT TO 11 U.S.C. SECTION
523**

Adversary Proceeding No. _____

PANDOL BROS., INC.,

Plaintiff,

vs.

JAMES A. PANDOL,

Defendant.

Date: N/A
Time: N/A
Place: 1300 18th Street, First Fl.
Bakersfield, CA
Dept. B
Judge: Honorable W. Richard Lee

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JURISDICTION AND VENUE

1. This is an adversary proceeding being brought in connection with Defendant's Chapter 12 case filed on December 14, 2009.
2. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. sections 157 and 1334 and is brought pursuant to 11 U.S.C. section 523 (a)(6).
3. This is a core proceeding under 28 U.S.C. section 157(b)(2)(I) and (O).
4. Venue is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409.
5. The Defendant's domicile is within the district and this is an adversary

PARTIES

6. Plaintiff is a California Corporation with a business address of 401 Road 192, Delano, California.
7. Defendant was formerly an officer and a shareholder of Plaintiff.
8. James A. Pandol ("Pandol") is an individual residing at 903 14th Ave., Delano, California. Defendant Pandol is the Debtor in the subject Chapter 12 proceeding, having filed a Voluntary Chapter 12 proceeding on December 14, 2009.

COMMON ALLEGATIONS

9. Defendant Pandol was formerly an officer and a shareholder of Plaintiff and is related to other shareholders of Plaintiff.

10. For over 50 years, since as early as 1946 to the present, Plaintiff has been doing business as PANDOL, PANDOL BROS., INC. and PANDOL AND SONS and has established federal common law trademark rights to them as unregistered trademarks.

11. Commencing on or about May 1, 2006, Defendant began willfully

infringing on the trademarks of Plaintiff by using PANDOL as a trademark on Defendant's produce.

12. Commencing on or about August 1, 2006, Defendant began willfully infringing on the trademarks of Plaintiff by using PANDOL FAMILY FARMS as a trademark on Defendant's produce.

13. Plaintiff has commenced an action before the Trademark Trial and Appeal Board at the United States Patent and Trademark Office seeking a determination that Defendant has willfully infringed on Plaintiff's trademarks and requesting that Defendant's trademark registrations be cancelled.

14. On March 3, 2010, Plaintiff obtained relief from stay, allowing it to continue with the matter pending before the Trademark Trial and Appeal Board.

15. A copy of the Motion for Summary Judgment filed with the Trademark Trial and Appeal Board in the trademark cancellation action No. 92148691 is attached as Exhibit "A" setting forth specific instances of willful, wrongful, malicious and fraudulent misconduct of the Defendant, which allegations are incorporated herein.

**CLAIM FOR RELIEF
11 U.S.C. 523(a)(6)**

16. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 15 above, and incorporates the same by this reference.

17. Defendant's wrongful use of the PANDOL and PANDOL FAMILY FARMS trademarks and wrongfully and fraudulently filing applications to register them with the United States Patent and Trademark Office caused willful, malicious, intentional injury to Plaintiff. Therefore the debt should be deemed nondischargeable pursuant to 11 U.S.C. 523(a)(2)(A) and 523(a)(6) in an amount that should be determined by this Court

1 following a determination by the Trademark Trial and Appeal Board in the above-
2 referenced action, together with costs, fees and other sums Plaintiff is entitled to
3 receive.

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PRAYER

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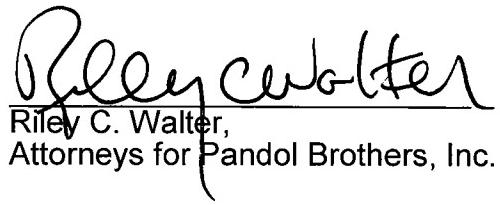
6 WHEREFORE, Plaintiff prays for relief as follows:

- 7 1. For an Order determining that the claims of Plaintiff against Defendant are
8 nondischargeable pursuant to 11 U.S.C. 523(a)(6).
- 9 2. For an Order determining that the losses and damages suffered by
10 Plaintiff as a result of Defendant's actions complained of are nondischargeable pursuant
11 to 11 U.S.C. 523(a)(6) in amounts to be established at trial but not less than
12 \$300,000.00 (three hundred thousand dollars).
- 13 3. For attorney's fees and costs as may be appropriate in this matter.
- 14 4. For such other and further relief as is just under the circumstances.

16 Dated: March 10, 2010

17 WALTER & WILHELM LAW GROUP,
18 a Professional Corporation

19 By:

20 
Riley C. Walter,
21 Attorneys for Pandol Brothers, Inc.